tion is apparent there seems no ground for allowing a specific performance of either alternative. Frye, Specific Performance, 3d ed. § 153.

In the principal case, however, the contract as set forth in the memorandum might be interpreted as an agreement to convey land, or, in case of failure, to pay a certain sum of money. The question is therefore raised as to whether or not equity will specifically enforce the performance of a contract in which liquidated damages are agreed upon. The fact that the stipulated sum can be recovered at law should not of itself be a bar to proceeding in equity. The promisor does not acquire the right to break his contract on tender of the money, or, in other words, such an agreement is not truly alternative. Under such circumstances, accordingly, specific performance has been allowed. *Crane* v. *Peer*, 43 N. J. Eq. 553; *National Provincial Bank* v. *Marshall*, 40 Ch. D. 112. It would seem, therefore, that the decision in the principal case may be supported, although the language of the court is wholly unjustifiable and misleading.

Contracts in Restraint of Marriage. — Restrictions on marriage are regarded as against public interest, and consequently agreements operating in general restraint of marriage are held to be illegal. In a recent Ohio case, the plaintiff had contracted to serve the defendant's testator as housekeeper as long as he should live, and not to marry during that time, and the question arose as to whether or not the whole contract was rendered illegal, so as to bar the plaintiff's recovery, although in fact she had not married, and had faithfully performed her services as housekeeper. *King* v. *King*, 59 N. E. Rep. 111. It may be stated as a broad rule that a consideration void in part will support a promise, while a consideration partially illegal or *contra bonos mores* will not. *King* v. *Sears*, 2 Cromp. M. & R. 48; Leake on Contracts, 3d ed. p. 677. In the principal case the court argue that, as it is lawful for one not to marry, it is lawful for one to promise not to marry, and consequently the consideration being merely void in part, the case comes under the doctrine of *King* v. *Sears*, *supra*. Similar reasoning might be applied to the analogous cases of contracts, in which a covenant in restraint of trade forms a part of the consideration. Courts hold, however, that such a covenant is not merely an insufficient or invalid consideration, but a vicious one, that renders the whole contract illegal. *Bishop* v. *Palmer*, 146 Mass. 469. Whether a promise for a money consideration not to marry or not to trade be called illegal, or simply void, is a matter of terminology. Such a promise is certainly contrary to the spirit of the law, and it is entirely a question of policy whether or not it should vitiate the transaction of which it forms a part.

Even admitting for the moment that the contract in the principal case was illegal, it might still be urged that the plaintiff was entitled to recover for her services as housekeeper. Leake on Contracts, 3d ed. p. 635; *Duval* v. *Wellman*, 124 N. Y. 156. In the above cited case a widow, who had advanced money under a marriage brokerage contract, admittedly illegal, was allowed to recover, the court holding that two parties may concur in an illegal act and yet not be *in pari delicto*. It would seem, however, inconsistent in the principal case to pronounce the transaction as a whole illegal, and yet allow the plaintiff to recover the very amount that she would obtain under the contract if deemed valid. Although, in

general, agreements in restraint of marriage are invalid, there is a limitation to the rule that must be observed. Of necessity there are many contracts that restrict marriage incidentally, owing to the nature of the services performed. A good test as to whether a contract should be deemed illegal as a whole may be taken from analogous cases in the law of property. Where, under a will, there is a condition that the property be forfeited on the legatee's marrying, the condition is void. *Morley* v. *Reynoldson*, 2 Hare, 570. Where, however, a devise is made to be forfeited on the devisee's marrying, if it appear that the object of the devise is to provide for the devisee while single, and not to restrict his marriage, the devise is valid, even though the devisee may be induced to remain single in order to enjoy the benefits of the property. *Arthur* v. *Cole*, 56 Md. 100. In the principal case, the court regarded the services of housekeeper as the main engagement, and the promise not to marry as merely incident thereto. The object of the transaction was not to restrict marriage in any way, but to have the services performed by a single woman. The court held that such a transaction was valid and enforceable, and though in a *dictum* the court perhaps goes too far in saying it was immaterial whether the plaintiff married or not, the decision, it would seem, reaches a correct result. See 12 HARVARD LAW REVIEW, 424.

DOUBLE INHERITANCE TAXES. — In these days of expensive wars of colonization, and consequent increased taxation, the way of the legatee is hard. Succession taxes are both heavy and rigidly enforced. But the most conspicuous instance of exacting the uttermost possible farthing from a beneficiary under a will is to be found in a recent English case. A father devised certain freehold estates to his son. The son died in the lifetime of his father, leaving issue which survived the father, and devising his property to trustees upon certain trusts. Section 33 of the Wills Act provides that where property is devised to a child of the testator, who dies in the testator's lifetime, leaving issue which survives the testator, such devise "shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator." The Finance Act, 57 and 58 Vict. c. 30, secs. 1 and 2, enacts that an estate duty shall be levied on all property passing at a person's death, of which the deceased was at the time of his death competent to dispose. The crown collected an inheritance tax from the father's estate, and then claimed a further tax on the same property from the executors of the son. The court held that the effect of section 33 of the Wills Act was to pass the real estate to the child in fee, to devolve as part of his property, and consequently that it was subject to a second inheritance tax from his executors. *Re Scott (deceased)*, 83 L. T. Rep. 613.

It has been forcibly contended that the effect of section 33 of the Wills Act is not a fictitious projection forward of life or postponement of death on the part of the devisee, but that the statute must be construed with its object in mind — to do for a testator what he himself would have done had he thought of the contingency that has arisen. 1 Underhill, Wills, 454. It is extremely probable that the framers of the act never contemplated that it would have any such effect as that given to it by the construction adopted in the principal case — which, indeed, if pressed to its logical conclusion, might produce the absurdity of a constructive bigamy,